

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Application of)	
)	
WORLDCOM, INC. (Debtor-in-Possession))	
d/b/a MCI and)	
Certain of its Subsidiaries (as debtors-in-possession))	Docket No. WC 02-215
)	
For Authorization to Transfer and/or Assign Blanket)	
Domestic Section 214 Authorization and International)	
Section 214 Authorizations Pursuant to Section 214 of the)	
Communications Act of 1934, as Amended)	
)	

OPPOSITION TO MOTION TO DISCLOSE DOCUMENTS

BellSouth opposes the Motion to Disclose Documents filed by Margaret F. Snyder on December 1, 2003. As discussed in detail below, the Commission must deny the Motion because the documents in question are clearly confidential, the Commission has allowed interested parties to view the documents pursuant to a protective order, and the Motion is procedurally defective.

BellSouth was a creditor in WorldCom's bankruptcy proceeding. This was a very public proceeding with many creditors, who were fully represented by capable lawyers. In this proceeding, BellSouth, like most creditors, reached a settlement agreement with WorldCom, which was approved by the bankruptcy court.

Having had its plan of reorganization approved by the bankruptcy court, WorldCom is now seeking to emerge from bankruptcy as MCI, its post-bankruptcy operating company. In doing so, WorldCom is attempting to transfer control of certain license to MCI, which is the

basis of the current proceeding. In the course of the proceeding, the Commission notified BellSouth that certain statements attributed to BellSouth in the press could constitute a perceived threat to file an opposition to WorldCom's licenses transfer. The Commission concluded that BellSouth's refrain from filing an opposition required approval by the Commission pursuant to 47 C.F.R. § 1.935. Although BellSouth never intended to oppose the licenses transfer and disagreed that any statements attributed to it in the press constituted a threat, BellSouth agreed to file a motion seeking the approval the Commission stated was necessary under section 1.935. BellSouth agreed to make this filing only with its understanding that the information would remain confidential. Accordingly, BellSouth filed a motion and affidavit as set forth in section 1.935. As stated, because the information in the filings, including the settlement agreement, is proprietary and confidential, BellSouth filed it under seal.

Subsequent to BellSouth's filing, Ms. Snyder requested to view the information. Upon receiving the request, the Commission issued a protective order that allowed all parties who are actively engaged in the conduct of the proceeding to view the information and use it in the proceeding, but required that the information remain protected from open disclosure to the public.¹ BellSouth did not object to the confidential information being provided to the parties identified in the protective order, subject to the protective order's terms, and Ms. Snyder, through her attorney, obtained and viewed the information. After receiving exactly what she requested – a copy of the confidential information and the ability to use it, subject to the terms of the protective order – Ms. Snyder now takes the unprecedented position that the documents should

¹ A copy of the protective order is attached as Exhibit 1.

be made public. For the reasons set forth below, the Commission must deny this request, which is the procedural equivalent to “piling-on.”

First, despite Ms. Snyder’s claims to the contrary, the information that is the subject of her request is obviously confidential and clearly meets exemption four of the Freedom of Information Act (“FOIA”) as well as the corresponding exemption established by the Commission at 47 C.F.R. § 0.457(d). Indeed, the Commission found it to be confidential when it issued the protective order.² Had the Commission believed the information not to be confidential it would have not issued the protective order but would have denied BellSouth’s request for confidentiality and placed the information in the public record. The Commission’s finding is proper and consistent with the legal standard regarding confidentiality. The Courts have established a two-part test for determining whether information provided to the Commission is confidential pursuant to exemption four of FOIA. The information is confidential “if disclosure of the information is likely to . . . either . . . (1) impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.”³ If the information meets either of these tests the information is deemed confidential and is shielded from public disclosure. The information that is the subject of Ms. Snyder’s request meets both of these tests.

Had BellSouth considered for an instant that the information that it provided would be made public, it would never have voluntarily submitted the information. Indeed, BellSouth would have exhausted all administrative and legal options to ensure that the information remained protected from public disclosure. There is no doubt that release of this information to

² See paragraph 5 of the protective order.

³ *National Parks Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

the public, which was provided by BellSouth on a voluntary basis and not even the court that approved the settlement agreement would allow to be made public, will have a very chilling effect on the provision of information in the future. The Commission can count on extensive legal battles when it seeks information from carriers in the future. On that basis alone – the fact that BellSouth would not have released the information had it believed it may be made public, and the fact that it will hamper future information-gathering – the Commission must maintain its original position that the information is confidential. The second part of the test, however, is also met.

As discussed, the information filed by BellSouth is confidential financial and commercial information that is the conclusion of settlement negotiations that involved financially confidential claims between the parties. Disclosure of this information would cause BellSouth competitive harm. Indeed, the Commission found that very similar information filed by SBC⁴ “contain[ed] confidential financial and commercial information, and that SBC has a *bona fide* interest in ensuring that these documents are not disseminated publicly.”⁵ Thus, the Commission has already determined that the *National Parks* test has been met and the information in question is confidential.

Additionally, the Commission’s finding of confidentiality is proper and consistent with other venues. The information represents the product of settlement negotiations in a bankruptcy proceeding. Courts have long upheld such negotiations, as well as the resulting agreements, as

⁴ The information that SBC filed was “the Settlement Agreement [in the WorldCom bankruptcy proceeding] and [an accompanying] Declaration, which [was] derived from the Settlement Agreement.” *In the Matter of WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Application for Consent to Transfer and/or Assign Authorization and Licenses*, WC Docket No. 02-215, Order, DA 03-0745, ¶ 7 (rel. Nov. 21, 2003).

⁵ *Id.*

confidential.⁶ There are significant policy reasons for insuring that settlement negotiations remain confidential. Without such assurances, parties would rarely enter into negotiations because potential vulnerable positions are often exposed and discussed. Moreover, many of the reasons why a party may settle, which often become part of the settlement agreement, are proprietary and confidential and that party would never reach a compromise if disclosure of the reasons were at all likely. Accordingly, courts always protect the confidentiality of settlement agreements as sacrosanct. Indeed, the bankruptcy court that approved the settlement agreement between BellSouth and WorldCom has recognized the confidentiality of the agreement and has not allowed its disclosure in that setting. The Commission should not allow Ms. Snyder to undermine the findings of the bankruptcy court – the very court that approved the settlement.

The information Ms. Snyder seeks is confidential. The Commission has found it to be confidential. Accordingly, the information cannot be made public. The Motion, as a matter of law, must be denied.

Second, Ms. Snyder's request is obviously an attempt to harass and embarrass BellSouth in this matter. Ms. Snyder has the information that she requests be made public. She, as well as any participant in the proceeding who has obtained the information pursuant to the protective order, can use this information, subject to the terms of the protective order, in this proceeding. Thus, she is not harmed or disadvantaged by not having the information made public. The Commission balanced the need for public disclosure with the needs of BellSouth and found that the needs of all interested parties can best be served through protecting the information from public disclosure but allowing the parties in the proceeding to view and use it pursuant to the protective order.

⁶ See *id.*, ¶ 6 (“We also note that courts have recognized that settlement agreements may constitute privileged information under Exemption 4 of the Freedom of Information Act.”).

Any claims that the purpose of the Motion is to have the Commission reassess its decision because of the public's right to know rings hollow. There is absolutely no doubt that BellSouth and WorldCom's settlement agreement in the bankruptcy proceeding was for the settlement of claims in that proceeding. It had nothing to do with what Ms. Snyder alleges to be "hush money" for BellSouth not to file an objection in this proceeding. Any attempt to characterize it as such is irresponsible and should be struck from the record.

Finally, Ms. Snyder's Motion is procedurally flawed and must fail. As discussed above, the Deputy Chief of the Commercial Wireless Division, through delegated authority, issued the protective order on November 4, 2003.⁷ The protective order, as well as a subsequent Commission order, clearly finds that the information in question is confidential and not available for public disclosure and may only be viewed by the parties in the proceeding pursuant to a protective order. If Ms. Snyder did not agree with the Deputy Chief's findings regarding confidentiality, her remedy was to file a Petition for Reconsideration pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106, *et seq.* Instead, she chose to file the Motion seeking public disclosure. Her failure to file a PFR is fatal because she is time barred by statute from seeking reconsideration after 30 days from public notice.⁸

Even if the Commission considered Ms. Snyder's Motion a PFR, which it should not, it is also invalid because Ms. Snyder does not have standing to seek public disclosure of the information. She has access to the information and may use it in this proceeding, subject to the

⁷ The protective order became public on November 5, 2003.

⁸ 47 U.S.C. § 405(a). *See Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) ("Section 405 of the Communications Act provides that petitions for reconsideration must be filed within thirty days of the date on which the FCC action complained of takes place."); *Reuters Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986) (Commission is prohibited from extending time of filing a PFR except in "extraordinary circumstances," which clearly are not present in this case).

terms of the protective order. She, therefore, has not been “aggrieved” or had her “interests . . . adversely affected” by the Commission’s decision to keep the information protected from public disclosure. The Commission must, as a matter of law, deny the Motion and any subsequent PFR that Ms. Snyder may file.

For the reasons stated herein, the Commission must deny the Motion and keep the information confidential.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: /s/ Stephen L. Earnest
Richard M. Sbaratta
Stephen L. Earnest

Its Attorneys

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Dated: December 11, 2003

EXHIBIT 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
WorldCom, Inc. and its Subsidiaries (debtors-)	
in-possession), Transferor,)	WC Docket No. 02-215
)	
and)	
)	
MCI, Inc., Transferee,)	
)	
Applications for Consent to Transfer and/or)	
Assign Authorizations and Licenses)	

Adopted: November 4, 2003**Released: November 4, 2003**

By the Deputy Chief, Commercial Wireless Division:

PROTECTIVE ORDER

1. On September 30, 2003, BellSouth Telecommunications, Inc. (BellSouth) filed with the Secretary a letter plus two attachments for which BellSouth requested confidential treatment. The attachments consist of a settlement agreement between BellSouth and WorldCom, Inc. (WorldCom), dated July 25, 2003 (the "BellSouth Settlement Agreement"), and a Motion for Approval with a supporting affidavit by Mary Jo Peed, dated September 29, 2003 (the "Peed Affidavit"). On October 3, 2003, Verizon filed a letter plus two attachments for which it requested confidential treatment. The attachments consist of a settlement agreement between Verizon and WorldCom, dated June 2, 2003 (the "Verizon Settlement Agreement"), and an affidavit by Jack White, dated October 3, 2003, in support of Verizon's request for approval of the Verizon Settlement Agreement (the "White Affidavit"). On October 3, 2003, SBC Telecommunications, Inc. (SBC) filed a letter plus two attachments for which it requested confidential treatment. The attachments consist of a settlement agreement between SBC and WorldCom, dated July 25, 2003 (the "SBC Settlement Agreement"), and a declaration by John H. Atterbury, dated October 3, 2003 (the "Atterbury Declaration"), in support of SBC's pleading, entitled "Request for Approval to Withdraw an Opposition not Asserted." Any of BellSouth, Verizon, or SBC may be referred to hereinafter as a "Submitting Party."

2. On October 6, 2003, WorldCom filed a letter and two attachments for which it requested confidential treatment. The attachments consist of a certification in connection with

the BellSouth Settlement Agreement (the "WorldCom/BellSouth Certification"), and a supporting affidavit by Anastasia Kelly, dated October 3, 2003 (the "Kelly/BellSouth Affidavit"). On October 9, 2003, WorldCom filed a letter and two attachments for which it requested confidential treatment. The attachments consist of a certification in connection with the Verizon Settlement Agreement (the "WorldCom/Verizon Certification"), and a supporting affidavit by Anastasia Kelly, dated October 8, 2003 (the "Kelly/Verizon Affidavit"). Also on October 9, 2003, WorldCom filed a letter and two attachments for which it requested confidential treatment. The attachments consist of a certification in connection with the SBC Settlement Agreement (the "WorldCom/SBC Certification"), and a supporting affidavit by Anastasia Kelly, dated October 8, 2003 (the "Kelly/SBC Affidavit"). WorldCom may also be referred to hereinafter as a "Submitting Party."

3. On October 15, 2003, Margaret F. Snyder, through her attorney, filed a Fourth Supplement to Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc. and Request to Inspect Documents, in which she seeks the right to inspect the above-described documents. Ms. Snyder and any other party to this proceeding may be referred to hereinafter as a "Reviewing Party."

4. The Submitting Parties have indicated that they consider the above-described documents to be confidential ("Confidential Documents") and believe that they should be subject to protection under the Commission's implementing rules. This Protective Order is intended to facilitate and expedite the review of the Confidential Documents, while protecting commercial or financial information that may be privileged or confidential.

5. *Non-Disclosure of Confidential Documents or Confidential Information.* Except with the prior written consent of a Submitting Party, or as hereinafter provided under this Protective Order, neither a Confidential Document nor information derived therefrom (hereinafter "Confidential Information") may be disclosed by a Reviewing Party to any person other than the Commission or its staff. Each of the Confidential Documents and their attachments shall bear the legend "CONFIDENTIAL DOCUMENT- SUBJECT TO PROTECTIVE ORDER - WC DOCKET NUMBER 02-215."

6. *Permissible Disclosure.* Subject to the requirements of paragraphs 7 and 8 below, Confidential Documents may be reviewed by outside counsel of record and by in-house counsel for a Reviewing Party who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, *i.e.*, counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraphs 7 and 8, and subject to the obligation to secure the confidentiality of Confidential Documents and Confidential Information in accordance with the terms of this Protective Order, such counsel may disclose Confidential Documents or Confidential Information to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings and who are not involved in the analysis underlying the business decisions and who do not participate directly in

the business decisions of any competitor of any Submitting Party; (iii) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (iv) employees of third-party contractors performing one or more of these functions. A Submitting Party may review its own Confidential Information.

7. *Access to Confidential Documents.* Persons described in paragraph 6, above, shall have the obligation to ensure that access to Confidential Documents and Confidential Information is strictly limited as prescribed above in this Protective Order. Such persons shall further have the obligation to ensure: (i) that Confidential Documents and Confidential Information are used only as provided in this Protective Order; and (ii) that Confidential Documents and Confidential Information are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10. Individuals who have obtained access to Confidential Documents and Confidential Information in accordance with the provisions of this paragraph and paragraph 8 may discuss and share the contents of the Confidential Documents and Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph and paragraph 8, and the Commission and its staff.

8. *Procedures for Obtaining Access to Confidential Documents.* A Reviewing Party that wishes to review a Confidential Document should contact Richard Arsenault, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554, 202-418-0920, richard.arsenault@fcc.gov. In all cases where access to Confidential Documents or Confidential Information is permitted pursuant to paragraph 6, and before reviewing or having access to any Confidential Documents or Confidential Information, each person seeking such access shall (1) execute the Acknowledgment of Confidentiality in the form attached hereto as Attachment A, and (2) file the Acknowledgment of Confidentiality with the Commission and serve it on the Submitting Parties so that it is received by the Commission and the Submitting Parties two business days prior to such person's reviewing or having access to any such Confidential Documents. A Submitting Party shall have an opportunity to object to the disclosure of the Confidential Documents to any such persons. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within one business day after receiving a copy of that person's Acknowledgment of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Confidential Documents.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Documents or Confidential Information outside the terms of this Protective Order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Use of Confidential Information.* Persons described in paragraph 6 may, in any pleadings that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedures:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;
- b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;
- c. Each page of any party's pleading that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order, WC Docket No. 02-215;" and
- d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and the Submitting Parties. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File. A party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to Commission staff.

11. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by a Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. A Reviewing Party, by viewing this material: (a) agrees not to assert any such waiver; (b) agrees not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agrees that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

12. *Subpoena by Courts or Other Agencies.* If a court or another administrative agency subpoenas or orders production of Confidential Documents or Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Confidential Document or Confidential Information.

13. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Documents provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Confidential Documents or Confidential Information.

14. *Violations of Protective Order.* Persons obtaining access to Confidential Documents or Confidential Information under this Protective Order shall use the information solely for preparation and the conduct of this proceeding, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other

administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Submitting Parties. Further, should such violation consist of improper disclosure of Confidential Information or Confidential Documents, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order.

15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Confidential Documents and all copies of same shall be returned to the relevant Submitting Party. No material whatsoever derived from Confidential Documents may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 6) may retain, under the continuing strictures of this Protective Order, two copies of pleadings containing Confidential Information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Submitting Parties not more than 21 calendar days after conclusion of this proceeding.

16. *Authority.* This Protective Order is adopted pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau

ATTACHMENT A**ACKNOWLEDGEMENT OF CONFIDENTIALITY**

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, WC Docket No. 02-215, and I understand it. I agree that I am bound by this Protective Order and that I shall not disclose or use Confidential Documents or information designated as Confidential Information or any information gained therefrom except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as counsel or consultant to a party or other person described in paragraph 6 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

Executed at _____ this ____ day of _____, 20 ____.

Signature

Title

CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of December 2003 served the following parties to this action with a copy of the foregoing **OPPOSITION TO MOTION TO DISCLOSE DOCUMENTS** by electronic filing to the parties listed below.

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Lynn Barclay